

MELVIN N. BARRY
FRANK SIMPSON

IBLA 86-87

Decided May 26, 1987

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, rejecting recordation filings and declaring certain lode mining claims null and void. AA-16801, AA-24750 through AA-24753.

Reversed in part; affirmed as modified in part.

1. Appeals: Generally -- Rules of Practice: Appeals: Effect of

When a Bureau of Land Management decision has been properly appealed to the Board of Land Appeals by an adversely affected party, the Bureau loses jurisdiction over the case and has no authority to take further dispositive action on the subject matter of the appeal. Should the Bureau desire to take such action, it may request that the Board take the action or ask the Board to restore the Bureau's jurisdiction by remanding the case for it to take the action.

2. Alaska National Interest Lands Conservation Act: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Lands tentatively approved for conveyance to the State of Alaska were legislatively conveyed to the State by sec. 906 of the Alaska National Interest Lands Conservation Act, and consequently the Department may no longer adjudicate the validity of unpatented mining claims located on such lands. Since sec. 314 of the Federal Land Policy and Management Act of 1976 applies only to public lands of the United States, the filing and recording requirements of sec. 314 do not apply to such legislatively conveyed lands, and the statutory filing requirements may not be relied upon to invalidate or otherwise determine the status of unpatented mining claims located on such conveyed lands.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On October 7, 1985, the Anchorage District Office, Bureau of Land Management (BLM), issued a decision rejecting mining claim recordation

filings and declaring certain lode mining claims null and void ab initio. 1/ The basis for BLM's action was that "the size of the claims * * * are [sic] for 2,400 feet by 3,300 feet each." Under the mining law, a lode claim may not exceed 1500 feet in length and 600 feet in width, 30 U.S.C. § 23 (1982). Melvin N. Barry and Frank Simpson filed a timely appeal on October 25, 1985.

On May 1, 1978, appellants filed for recordation with BLM under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), a copy of the location notice for the B.S. II lode claim. The notice stated the claim had been posted July 22, 1965, and that it was 2,000 feet long and 1,800 feet wide. 2/ BLM assigned this claim serial number AA-16801.

On February 20, 1979, Barry filed a letter with BLM stating as follows: "Enclosed is a copy of sites B.S. I and B.S. II. B.S. I is one claim, B.S. II (AA-16801) is four claims." Included with that letter was a copy of a location notice for the B.S. I lode claim. The notice stated the claim had been posted July 19, 1965, and described the claim as being 800 feet long and 200 feet wide. BLM assigned this claim serial number AA-24750. Also included with the letter was a copy of the same location notice filed on May 1, 1978, for the B.S. II claim. Apparently because Barry stated that B.S. II was actually four claims, BLM assigned that claim three more serial numbers, AA-24571 through AA-24753.

Appellants each filed annually affidavits of assessment work. Barry identified the claims in each case as B.S. I and B.S. II and included the BLM serial number AA-16801. Simpson, on the other hand, identified the claims as B.S. I, II, III, and IV, and included on his annual filings all five serial numbers assigned by BLM.

In their notice of appeal which included their statement of reasons appellants stated:

We are appealing the decision on voiding of our Thompson Pass mining claims.
Enclosed is a copy of location notice of claim #1, date 1965 -- size 800 feet by
200 feet. We have kept the

1/ The claim names and BLM serial numbers are as follows:

| <u>Claim Name</u> | <u>BLM Serial Number</u> |
|-------------------|--------------------------|
| B.S. II | AA-16801 |
| B.S. I | AA-24750 |
| B.S. II | AA-24751 |
| B.S. II | AA-24752 |
| B.S. II | AA-24753 |

2/ The following notation appeared on the notice after the declaration, "THIS CLAIM AND ITS RELATION TO ADJACENT CLAIMS ARE SHOWN IN MY SKETCH BELOW:"

| | |
|-------------|----|
| NE | SE |
| 2,400 ft | |
| to 3,300 ft | |
| NW | SW |

assessments on all claims. This one conforms to the 1872 mining law, as it is on the mineral and within the demands. The monuments are in place, but the claims have not been surveyed.

On October 28, 1985, in response to the notice of appeal BLM issued a decision styled "Decision of October 7, 1985 vacated in Part." Therein, BLM stated that its declaration of the B.S. I claim as null and void was due to an administrative error. It, therefore, purported to vacate its October 7 decision as it related to the B.S. I claim.

[1] This action by BLM was clearly improper. We have said many times that once an appeal is filed, BLM no longer has authority to take further dispositive action in a case. James T. Brown, 46 IBLA 265 (1980); State of Alaska v. Patterson, 46 IBLA 56 (1980). The proper procedure for BLM to have followed in this case would have been for it to move the Board to vacate the October 7 decision or request that the Board remand the case to allow it to take such action.

Based on appellant's statement of reasons and the record in this case, it is clear that BLM erroneously declared the B.S. I claim null and void. The copy of the location notice filed in 1979 identified the dimensions of that claim to be 800 feet long by 200 feet wide, well within the statutory size limits.

Our review of the record reveals that the BLM decision declaring the B.S. I and B.S. II claims null and void must be reversed for another reason. BLM's October 7, 1985, decision noted that the lands in question had been selected by the State of Alaska on November 24, 1965, in selection application A-06399. Appellant Barry had described the location of the claims in his letter filed with BLM on February 20, 1979, as being in the S 1/2 sec. 36, T. 8 S., R. 3 W., Copper River Meridian. The case record indicates that on June 18, 1974, the lands in T. 8 S., R. 3 W., were tentatively approved to the State. ^{3/}

[2] As the Board has stated, unpatented mining claims located on lands tentatively approved to the State of Alaska were legislatively approved by sec. 906(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1635(c) (1982), and therefore the Department may no longer adjudicate mining claims located on those lands. Elizabeth S. Hjellen, 93 IBLA 203, 205 (1986); Ed Bilderback, 89 IBLA 263, 265 (1985); see Terry L. Wilson, 85 IBLA 206, 221, 92 I.D. 109, 118 (1985). Section 906(c) makes the conveyance effective as of the date of tentative approval. Thus, in this case conveyance of T. 8 S., R. 3 W., was effective on June 18, 1974.

^{3/} We note that on Mar. 21, 1984, BLM tentatively approved T. 8 S., R. 2 W., Copper River Meridian secs. 19 through 36, "excluding mining claim recordation AA-24750 which appears to fall within sec. 31." The case record for AA-24750 does not indicate the claim is located in sec. 31. Appellant Barry has stated that the B.S. I and B.S. II "sites" are located in sec. 36. However, the on-ground location would control.

BLM had no authority to declare appellants' mining claims null and void in 1985, since the lands were not public lands. ^{4/} However, since the filing and recordation requirements of sec. 314 of FLPMA apply only to unpatented mining claims located on public lands of the United States, those requirements do not apply to such claims in T. 8 S., R. 3 W., as that land was legislatively conveyed to the State. ^{5/} Therefore, rejection of recordation filings for claims within that area would be proper. This was not the basis given by BLM in its decision for rejecting recordation filings in this case; however, this is the correct basis for doing so. Therefore, BLM's decision, to the extent it rejects recordation filings, is affirmed as modified.

Accordingly, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, that part of BLM's October 7, 1985, decision declaring the claims null and void is reversed; that part of the decision rejecting recordation filings is affirmed as modified.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge.

^{4/} With regard to BLM's basis for declaring the claims null and void, we direct attention to 1 Am. L. of Mining § 32.03[3] [c] (2d ed. 1984) which states that "[i]f a claim marked in good faith exceeds 1500 feet in length or 600 feet in width, the location is not void in its entirety, but is void as to the excess.

* * * * *

If any error in measurement is so large as to imply fraud on the part of the original locator, the entire claim is void" (Footnotes omitted).

^{5/} To the extent the B.S. I Claim (AA-24750) may lie within sec. 31, T. 8 S., R. 2 W., Copper River Meridian, which was excepted from tentative approval, appellants must continue to make annual filings under sec. 314 of FLPMA to preserve that claim.